

**ARKANSAS COURT OF APPEALS**

DIVISION II

No. CA08-159

JONATHAN YOUNG,  
APPELLANT

V.

KRISTALYNN YOUNG,  
APPELLEE

Opinion Delivered 3 SEPTEMBER 2008

APPEAL FROM THE GARLAND  
COUNTY CIRCUIT COURT,  
[NO. DR-2006-1150-IV]

THE HONORABLE MARCIA  
RENAUD HEARNSBERGER, JUDGE

AFFIRMED

**D.P. MARSHALL JR., Judge**

This divorce case asks questions about alimony, attorney’s fees, and a money judgment awarded to Kristalynn Young as restitution for two missing rings. After being married for twelve years and having two children, Jonathan and Kristalynn Young divorced. They reached agreements about custody, child support, and most of their property. After a trial on the remaining issues, the circuit court awarded Kristalynn \$1,100.00 per month in temporary alimony for one year, attorney’s fees and costs totaling \$10,890.00, and \$2,350.00 as restitution for two rings that disappeared when Jonathan had exclusive control over their home. Jonathan appeals all three rulings.

*Alimony.* Jonathan first argues that the circuit court abused its discretion by awarding alimony. The court found that Jonathan had the ability to earn \$5,000.00

per month, that he had the ability to pay alimony, and that Kristalynn needed financial assistance. He contends that these were clear errors.

First, the record contains a range of proof about Jonathan's annual income as a massage therapist. The range was from about \$24,000.00 per year (Jonathan's adjusted gross income on a 2006 income-tax return), to \$5,000.00 a month (Jonathan's 2006 sworn statement on a loan application), up to about \$85,000.00 (the 2006 deposits in a joint checking account when only Jonathan was working). Jonathan testified that he did not lie when he wrote on his 2006 loan application that he made \$5,000.00 a month. Kristalynn testified that about thirty percent of Jonathan's work was from vacationers who paid in cash because he did not accept out-of-state checks. Given the range of evidence about Jonathan's income, and his admission that he had earned \$5,000.00 a month in 2006, the court's findings about his income and ability to pay alimony are not clearly erroneous. *Miller v. Miller*, 70 Ark. App. 64, 66, 14 S.W.3d 903, 905 (2000). Though Jonathan argues otherwise, we see no imputed-income issue. *Cf. Morse v. Chapman*, 99 Ark. App. 445, 448–50, \_\_\_ S.W.3d \_\_\_, \_\_\_ (2007). Jonathan's admission about his recent monthly earnings doing the same job resolves this point against him.

We likewise see no clear error in the court's finding that Kristalynn needed temporary alimony. *Miller, supra*. The circuit court awarded Kristalynn \$1,100.00 a month—the difference between her anticipated monthly income and her anticipated

monthly expenses. Jonathan argues that the circuit court erred by not taking his agreed child support into consideration in awarding alimony. We are not persuaded by this argument. The items included in Kristalynn's budget—rent, food, car payments, and utilities—will indeed benefit their children. But her budget did not include child care, children's clothes, medical expenses for the children, or any items specifically for them. These expense omissions wash with the omission of child support from income. During the divorce action, Kristalynn obtained her first job outside the home in at least seven years. She also relocated to be closer to her sister, who could help her with child care. Further, the circuit court awarded only temporary alimony for one year and indicated that it would re-evaluate the issue when Kristalynn's financial circumstances improve.

The circuit court carefully considered both Kristalynn's need for alimony and Jonathan's ability to pay. *Hiett v. Hiett*, 86 Ark. App. 31, 35–36, 158 S.W.3d 720, 723–24 (2004). No abuse of discretion occurred in this temporary award. *Hiett*, 86 Ark. App. at 35, 158 S.W.3d at 723.

The circuit court misspoke, however, by mentioning Kristalynn's care and custody of her daughter and autistic son when it awarded alimony. A court may not award child support as alimony. *Bettis v. Bettis*, 100 Ark. App. 295, 299–300, \_\_\_ S.W.3d \_\_\_, \_\_\_ (2007). But no reversible error occurred here for two reasons. The record demonstrates Kristalynn's personal need for temporary alimony in addition to

child support. Moreover, Jonathan has not argued that the award was an effort to collect more child support by calling it alimony. He therefore waived any argument for reversal on this basis. *Cummings v. Boyles*, 242 Ark. 923, 923, 415 S.W.2d 571, 571–72 (1967).

*Attorney's fees.* We also affirm the circuit court's award of attorney's fees. Jonathan argues that the court abused its discretion here because Kristalynn did not provide an itemized list of the hours that her attorneys spent on the case and because he lacks the ability to pay. We disagree. *Miller*, 70 Ark. App. at 69–70, 14 S.W.3d at 907.

First, the hours. Kristalynn did not provide any itemized bills from her lawyers. Kristalynn submitted a list of the payments that she had made to them, which totaled \$10,890.00. Jonathan did not ask for an itemization. The circuit court did not abuse its discretion by awarding these fees because the court observed counsel's work before and during the trial and because Jonathan did not request an itemization. *Deaton v. Deaton*, 11 Ark. App. 165, 166, 668 S.W.2d 49, 50 (1984).

Second, Jonathan's ability to pay. In its letter opinion, the court found that Jonathan "saved and hid cash income from [Kristalynn] during at least the last year of their marriage in order to pay attorney's fees for this divorce and, therefore, should and is required to pay the reasonable attorney's fees [Kristalynn] has incurred as a result of this action." The record shows that the circuit court considered both parties' financial

situations in ruling on this issue. The court did not believe Jonathan's testimony about his inability to pay the fees. We defer to the circuit court on this credibility issue. *Weatherly v. Weatherly*, 87 Ark. App. 291, 295, 190 S.W.3d 294, 298 (2004). Moreover, the court supplemented its order and allowed Jonathan to pay the fees over time at \$300.00 a month, which mitigated the award's impact on him.

*The rings.* Jonathan also argues that the circuit court clearly erred in finding that he owed Kristalynn restitution of \$2,350.00 for two rings. These were gifts from Jonathan. Kristalynn testified that the rings were worth \$2,350.00, though Jonathan did not pay that amount because he used a coupon when buying one of them. Kristalynn further testified that she left the rings in her jewelry box while she went to get a manicure. Before Kristalynn went to the spa, Jonathan removed the garage-door opener from her car, leaving her without access to the house. She had no key with her. While she was at the spa, Jonathan had her served with the divorce papers. The circuit court later entered an emergency order permitting Kristalynn to return home. Her rings, however, were not where she had left them. Jonathan testified that he had not seen the rings since the day he had Kristalynn served. He acknowledged, however, that he had visited pawn shops since that day and that he had exclusive control over their home during the time that he kept Kristalynn out of it.

The circuit court had the authority to restore these rings to Kristalynn. *Weatherly*, 87 Ark. App. at 295, 190 S.W.3d at 298. Awarding their cash value instead

in these circumstances was within the court's equitable powers. The court believed Kristalynn's testimony about the rings over Jonathan's. And we must defer to the circuit court's evaluation of the parties' credibility. *Ibid.* We therefore see no clear error in its findings about the rings. *Ibid.*

Affirmed.

BIRD and GLOVER, JJ., agree.